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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 IN RE: HIGH-TECH EMPLOYEE
16 ANTITRUST LITIGATION

17 THIS DOCUMENT RELATES TO:
18 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DEFENDANT GOOGLE INC.'S
ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF GOOGLE'S
SUPPLEMENT REGARDING MOTION
TO COMPEL GOOGLE DOCUMENTS,
AND EXHIBIT A TO THE
DECLARATION OF ERIC B. EVANS IN
SUPPORT THEREOF**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendant Google Inc. (“Google”) hereby moves to seal the following information:

- (i) Portions of Google’s Supplement Regarding Motion to Compel Google Documents (“Google’s Supplement”) (proposed redacted version attached as Exhibit 1); and
- (ii) Exhibit A to the Declaration of Eric B. Evans in Support of Google’s Supplement (transcript excerpts from the deposition of Mr. William Campbell) (in its entirety).

This information has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Google is filing the accompanying Declaration of Eric B. Evans in support of Google’s sealing request.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has “carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion,” where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (“[A] ‘particularized showing’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.’”); *see also Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them under seal.”)).

1 **II. GOOD CAUSE EXISTS TO SEAL GOOGLE’S CONFIDENTIAL**
2 **INFORMATION**

3 Portions of Google’s Supplement and Exhibit A to the Declaration of Eric B. Evans in
4 Support of Google’s Supplement (transcript excerpts from the deposition of Mr. William
5 Campbell) reflect confidential and highly sensitive information related to the unique business
6 arrangement between Mr. Campbell and Google regarding his role as a senior advisor to Google,
7 including how this arrangement was formalized and documented, as well as the details and
8 express terms and conditions of that arrangement (such as the specific manner in which Mr.
9 Campbell has been, and continues to be, compensated for his work as a senior advisor to
10 Google). As demonstrated by the Declaration of Laszlo Bock previously filed on January 25,
11 2013 (Dkt. 319-3) (“Bock Decl.”), this information is closely held within Google and available
12 only to select members of Google’s senior management and legal department. Bock Decl. ¶ 4.
13 If this information were made public, Google would suffer competitive harm because Google’s
14 competitors would discover, and therefore better understand, the unique and confidential
15 arrangement between Mr. Campbell and Google regarding his role as senior advisor to Google,
16 including how this arrangement was formalized and documented and the details and express
17 terms and conditions of that arrangement (such as the specific manner in which Mr. Campbell
18 has been, and continues to be, compensated for his work as a senior advisor to Google). Bock
19 Decl. ¶ 5. Portions of Google’s Supplement and Exhibit A to the Declaration of Eric B. Evans
20 in Support of Google’s Supplement discuss or contain the above information. Declaration of Eric
21 B. Evans in Support of Administrative Motion to Seal ¶¶ 2-3. Google designated the foregoing
22 information “Confidential” or “Attorneys Eyes Only” under the Protective Order.

23 Personal compensation information is regularly sealed because of its confidential and
24 private nature. *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10,
25 2010) (granting a motion to seal records containing plaintiffs’ salary information); *Nettles v.*
26 *Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at *2, 2007 BL 247444 (W.D. Wash. Mar.
27 16, 2007) (holding that salary review notices for third parties “who have not chosen to have their
28 salary history placed into the public record” could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-

1 1043, 2010 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012)
2 (noting that portions of summary judgment materials were filed under seal because they
3 contained “confidential salary information”). Similarly, compensation practices and decisions
4 are routinely subject to a sealing order. *Hertz Equip. Rental Co. v. Useda*, No. CV-10-4953,
5 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order to
6 enjoin a former employee from using a company’s “confidential and/or trade secret employee
7 compensation information”). Moreover, the sealed information also includes Mr. Campbell’s
8 social security number, which is required to be redacted under the Federal Rules. Fed. R. Civ. P.
9 5.2.

10 In addition, good cause exists to seal confidential information relating to a company’s
11 internal business strategies, such as its decisions on how to formalize and document unique
12 business arrangements. *See* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing of “a trade secret
13 or other confidential research, development, or commercial information”) (emphasis added);
14 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at
15 *3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its
16 investment adviser that contained “sensitive and confidential information, including long-term
17 financial projections, discussions of business strategy, and competitive analyses”); *Network*
18 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,
19 at *9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business
20 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*
21 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at *9 (D. Ariz.
22 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”
23 reason standard applicable to dispositive motions, including a “spreadsheet tracking information
24 regarding potentially competitive products,” and other business strategy documents, such as
25 information relating to “product competitiveness, and market and technological opportunities
26 and risks”).

III. CONCLUSION

For the foregoing reasons, Google respectfully requests that this Court order portions of Google's Supplement and Exhibit A to the Declaration of Eric B. Evans in Support of Google's Supplement to be placed under seal. In accordance with Civil Local Rule 79-5(b) and (c), a proposed order granting the Administrative Motion to Seal will be lodged with the Clerk in hard copy and served on counsel for Plaintiffs. Pursuant to this Court's January 11, 2013 Order, a copy of Google's Supplement and Exhibit A to the Declaration of Eric B. Evans in Support of Google's Supplement with the proposed redactions highlighted in yellow is attached as Exhibit 2. In accordance with Civil Local Rule 79-5(b) and (c), Google's proposed redacted version of Google's Supplement and Exhibit A to the Declaration of Eric B. Evans in Support of Google's Supplement will be lodged with the Clerk in hard copy within a sealed envelope and will be served on counsel for Plaintiffs.

Dated: February 18, 2013

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By: /s/ Eric B. Evans
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